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SUBJECT: CANADA: SECURITY CERTIFICATES TAKE MAJOR HIT

REF: OTTAWA 747

11. (SBU) Summary: Canada's Federal Court has formally quashed the immigration security certificate against alleged terror suspect Adil Charkaoui. The Court also blocked a potential federal appeal to the Federal Court of Appeal to clarify the limits of legal disclosure in national security cases. The collapse of one of Canada's most high-profile security certificate cases is a major setback to the battered process and to the government's ability successfully to uphold the four certificate cases still before the courts. End summary.

12. (U) On October 14, Presiding Federal Court Justice Danielle Tremblay-Lamer issued a 68-page ruling voiding the immigration security certificate against alleged terror suspect Adil Charkaoui. On September 24, Justice Tremblay-Lamer had lifted all remaining bail restrictions on Charkaoui and signaled her intent to quash the certificate after the federal government withdrew the greater part of its sensitive wiretap evidence from the case rather than comply with her previous order to disclose the information (reftel). She continued to hear submissions and the certificate remained valid until the Court made this final ruling.

"A SERIOUS QUESTION OF GENERAL IMPORTANCE"

13. (U) In its submission, the federal government acknowledged that its remaining data against Charkaoui did not meet the burden of proof required by the certificate. However, it asked the Court to find that the Charkaoui case raised a "serious question of general importance" -- the balance between national security concerns and a defendant's right to the fullest defense possible -- as grounds for an appeal to the Federal Court of Appeal. Pending clarification by the Appeal Court, the federal government further asked the Federal Court to uphold the security certificate against Charkaoui.

NO BASIS FOR APPEAL

14. (U) Justice Tremblay-Lamer rejected both requests. She defended her demand for greater transparency, arguing that the belief that the court put individual rights ahead of national security was "unfounded." She refused the appeal, finding that the issues raised were particular to the Charkaoui case and of no broader importance, as well as that no legal basis existed for further appeal. Justice Tremblay-Lamer noted that "the notion of national security is a question of perspective," adding that "grey areas can exist where a misunderstanding is possible." She added that the federal government's clear purpose in seeking the appeal was to rewrite her previous disclosure order.

15. (U) Justice Tremblay-Lamer formally ruled that the government's failure to present sufficient evidence rendered the security certificate against Charkaoui null and void. She wrote that to maintain the certificate without supporting evidence would violate Charkaoui's constitutional right to life, liberty, and security of the person under section 7 of the Charter of Rights and Freedoms, as well as contravene fundamental principles of justice and of logic.

¶16. (U) In a brief response to the ruling, a spokesperson for the Canadian Security Intelligence Service (CSIS) commented that "it is unfortunate that, given the unique nature of this decision and the implications for national security, the judge did not agree that the case presented aspects that warranted an appeal."

#### EVIDENCE AGAINST CHARKAOUI

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¶17. (U) The most recent summary of the case against Charkaoui indicated how much confidential evidence the federal government had withdrawn. The government reportedly disclosed that it still suspected that he was a member of al-Qaeda and had trained in terrorist camps in Afghanistan and Pakistan, as well as that he consorted with known Islamic extremists. It corroborated Charkaoui's presence at al-Qaeda terrorist training camps in 1998 with evidence from so-called Millennium Bomber Ahmed Ressam, and Nouredine Nafia, the former head of the GICM, a Moroccan Islamist terror group. However, material gleaned directly from Charkaoui, including his account of activities at mujahedeen training camps, his alleged declarations in support of jihad, and references to a June 2000 conversation in which he allegedly discussed seizing control of a commercial airliner, had been blacked out.

#### SEEKING COMPENSATION

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¶18. (U) Justice Tremblay-Lamer nonetheless rejected Charkaoui's request to reserve his right to sue the federal government for alleged violations of his constitutional rights. She formally closed the certificate case, advising that Charkaoui would have to launch a separate case if he wanted to seek further remedy. At a

OTTAWA 00000794 002 OF 002

post-ruling press conference, Charkaoui told the media that he felt "elated" and "totally vindicated" by the ruling. He stated that he would seek a formal apology from the federal government. His lawyer confirmed that Charkaoui would also seek substantial financial compensation for his "arbitrary and abusive loss of freedom."

¶19. (SBU) Comment: The collapse of the federal government's high-profile case against Charkaoui is a major setback to the credibility of the battered security certificate system, to Canada's ability to uphold the remaining four certificates, and to efforts by security agencies to set limits to legal disclosure of sensitive data in court. The Charkaoui case lasted six years and set significant legal precedents, including two Supreme Court rulings in favor of greater transparency of evidence in security cases.

JACOBSON